

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.107 of 2016
(Filed on 04.06.2016)

WAPDA through Legal Advisor WAPDA/Director
(Legal) WAPDA, WAPDA House Lahore
(Authorized).

....APPELLANT

VERSUS

1. Muhammad Ramzan Datt son of Sain
Abdul Rasheed, r/o Sector C/4, Mirpur.

....RESPONDENT

2. Collector Land Acquisition Mangla Dam
Raising Project Zone-1, Mirpur.
3. Chief Engineer Raising Project Mangla
Dam, Mirpur.
4. Azad Government, State of Jammu and
Kashmir through Chief Secretary,
Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgement and decree of
the High Court dated 30.03.2016 in civil
appeal No.324 of 2008)

FOR THE APPELLANT: Ch. Liaqat Afzal,
Advocate.
FOR THE RESPONDENT: In person.
FOR PROFORMA Mr.Mehmood Hussain
RESPONDENT NO.2: Ch. Addl. Advocate-
General

Civil Appeal No.113 of 2016
(Filed on 23.06.2016)

Muhammad Ramzan Dutt son of Sain Abdul
Rasheed, r/o Sector C/4, Mirpur at present
House No.89-D, Sector D/3, East Mirpur.

....APPELLANT

VERSUS

1. Collector Land Acquisition Mangla Dam
Raising Project, Mirpur.
2. WAPDA through Chief Engineer/Project
Director Mangla Dam Raising Project.
3. Chief Engineer/Project Director Mangla
Dam Raising Project, Mangla Mirpur.
4. Azad Government through its Chief
Secretary AJK, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgement and decree of the High Court dated 30.03.2016 in civil appeal No.324 of 2008)

FOR THE APPELLANT: In person.

FOR THE RESPONDENTS: Ch. Liaqat Afzal, Advocate and Mr. Mehmood Hussain Ch. Addl. Advocate-General.

Date of hearing: 28.03.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeals have been directed against the judgment and decree of the High Court dated 30.03.2016, whereby the appeal filed by the appellant, in appeal No. 113, Muhammad Ramzan Dutt, has been accepted. As both the appeals arise out of the same judgment, therefore, these are being disposed of through this single judgment.

2. The facts necessary for disposal of instant appeals are that the land of the appellant-landowner, *Muhammad Ramzan*

Dutt, measuring 12 *kanal* 7 *marla*, situate at village Thothal was acquired for Mangla Dam Raising Project. The Collector Land Acquisition determined the compensation of the acquired land as Rs.4,00,000 per *kanal* for its kind *maira doem* and Rs.2,00,000 per *kanal* for its kind *banjer qadeem*. Feeling dissatisfied the landowner filed reference application for enhancement in the compensation amount. The claim of the landowner was that the market value of the acquired land is not less than Rs.1,00,00,000 per *kanal*. The learned Reference Judge after necessary proceedings while accepting the reference application enhanced the compensation from Rs.4,00,000 per *kanal* to Rs.5,00,000 per *kanal* for the kind of land *maira doem* and from Rs.2,00,000 per *kanal* to Rs.3,00,000 per *kanal* for the kind of land *banjer qadeem*. Again feeling dissatisfied, the landowner filed an appeal before the High

Court. The learned High Court while accepting the appeal fixed the compensation amount of acquired land as Rs.10,63,333 per *kanal* irrespective of its kinds. Against the judgment and decree passed by the High Court both the parties filed the instant appeals. The landowner filed appeal for further enhancement, whereas, WAPDA filed appeal for setting aside the enhancement made by the High Court.

3. Ch. Liaqat Afzal, Advocate the learned counsel for the appellant-WAPDA, argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that both the Courts below failed to appreciate the evidence available on record in a legal manner and illegally made the enhancement in the compensation determined by the Collector Land Acquisition. He submitted that the

judgment under appeal is based on irrelevant and inadmissible material/evidence, therefore, the same is void. He added that the learned Reference Judge rejected the sale-deed produced by the landowner, available on record as Exh.PH, while recording the strong reasons but the learned High Court without any justification considered the same. He further added that the landowner has not made any claim for compensation in pursuant to notice issued under section 9 of the Land Acquisition Act, thus, the Courts below were not justified to enhance the compensation. In this regard, he referred to section 25 of the Land Acquisition Act. He also submitted that the reference was hit by section 25(2) of the Land Acquisition Act and liable to be dismissed but the learned Reference Judge failed to appreciate the law on the subject. He lastly submitted that the Courts below failed to

adhere to the dictum laid down by this Court in a number of cases while making the enhancement in the compensation.

4. Mr. Mehmood Hussain Chaudhary, the learned Additional Advocate-General while appearing on behalf of the Azad Govt. & others adopted the arguments advanced by the learned counsel for WAPDA.

5. On the other hand, Mr. Muhammad Ramzan Dutt, Advocate, (the appellant), also stated that the Courts below failed to appreciate the evidence brought on record by the landowner as well as the law on the subject. He added that he proved through oral as well as documentary evidence that the acquired land is of commercial nature and the market value of the same is not less than Rs.1,00,000,00 per *kanal*, but despite that the Courts below made a meagre enhancement in the compensation. He contended that the

impugned judgment is self contradictory as at one hand the learned High Court observed that the land of the landowner could be used for commercial purpose but on the other hand did not award the compensation as per claim of the landowner. He further contended that the learned High Court wrongly held that the findings recorded by the learned Reference Judge regarding the determination of compensation of land measuring 5 *kanal* 4 *marla* in the name of Custodian has not been challenged by the landowner as the said findings had been challenged before the High Court. He lastly submitted that the appellant has proved through un-rebutted evidence that the acquired land is of commercial nature and its market value is Rs.1,00,00,000 per *kanal*, therefore, he is entitled to get the claimed compensation.

6. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. The perusal of the record reveals that the land of the appellant, *Muhammad Ramzan Dutt*, measuring 17 *kanal* 11 *marla*, situate at village Thothal was acquired for Mangla Dam Raising Project. The compensation to the extent of land measuring 12 *kanal* 7 *marla* was assessed in the name of the appellant-landowner, whereas, the compensation of the remaining land measuring 5 *kanal* 4 *marla* was determined in the name of Custodian Evacuee Property. The record reveals that the landowner has not challenged the determination of compensation in the name of Custodian; even then, the learned Reference Judge discussed this point and upheld the act done by the Collector. The appellant challenged the judgment of the

Reference Judge before the High Court, but the perusal of the memo of appeal shows that he has not challenged the findings recorded by the learned Reference Judge regarding the determination of compensation in the name of Custodian. It is also an admitted fact that the PRTO issued in favour of the landowner only to the extent of land measuring 12 *kanal* 7 *marla*. In such state of affairs, when the landowner neither challenged the determination of compensation in favour of the Custodian nor challenged the findings recorded by the Reference Judge in this regard before the High Court, at this stage, we do not intend to dilate upon the controversy.

7. The learned counsel for the appellant-WAPDA during the course of arguments raised a point that the landowner has not claimed the enhancement in the compensation while filing objections before the Collector, therefore,

under section 25(2) of the Land Acquisition Act the reference was liable to be dismissed and the Courts below were not justified to make the enhancement. To appreciate the same we have examined the record as well as the relevant provision of law. It appears from the objections filed by the landowner, in pursuance of notice under section 9 of the Land Acquisition Act, that the landowner although has not claimed any specific amount, however, he made the request for determination of the compensation of the land as per market value. The relevant paragraph of the objections reads as under:-

"2- یہ کہ نوٹس میں اراضی کی قسم غلط طور پر بنجر قدیم درج کی گئی ہے موقع پر اراضی کمرشل ہے جو کہ بھٹہ خشت کے لئے استعمال ہوتی ہے و نیز اراضی سکنی، زرعی اور کمرشل اندر حدود بلد یہ میں واقع ہے۔ اس طرح مارکیٹ ویلیو کے مطابق ہی معاوضہ کا تعین کیا جانا قرین انصاف ہے۔"

Here we deem it proper to reproduce section 25 of the Land Acquisition Act, 1894, which reads as under:-

“25. Rules as to amount of compensation.- (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.”

The bare reading of section 25 of the Land Acquisition Act shows that the same contains 3 clauses; under section 25 (3) of the Land Acquisition Act the Court has power, subject to

sufficient reasons, to award the amount more than that awarded by the Collector but under section 25(1), the amount of compensation to be awarded to the landowner cannot exceed the amount claimed by him pursuant to the notice given to him under section 9 of the Act. Subsection 2 of section 25 of the Act is applicable when the landowner without sufficient reason has refused to make claim before the Collector when award is made, which eventuality is not available in the instant case. Thus, the argument of the learned counsel for the WAPDA that the reference was hit by section 25(2) of the Land Acquisition Act and liable to be dismissed, has no substance.

8. To appreciate the real controversy involved in the matter regarding the determination of proper amount of compensation, we have examined the material available on record with utmost care. In the

reference application the claim of the landowner is that the market value of the acquired land is not less than Rs.1,00,00,000 per *kanal*. The landowner mainly relied upon the valuation table, Exh.PG and a copy of a sale-deed, Exh.PH. The Collector Land Acquisition determined the compensation of the acquired land as Rs.4,00,000 per *kanal* for its kind *maira doem* and Rs.2,00,000 per *kanal* for its kind *banjer qadeem*. The valuation table, Exh.PG shows that the value of the agricultural land of village Thothal has been fixed as Rs.8,40,000 per *kanal*. The copy of sale-deed, Exh.PH, shows that the land measuring 16 *marla* situate in the same vicinity was sold against a consideration of Rs.8,00,000/-. The record shows that except the oral account and documents referred to hereinabove, no other document is available on record which may support the claim of the

landowner that the market value of the acquired land is Rs.1,00,00,000 per *kanal*. In such situation, it can safely be said that the landowner failed to prove his claim. The perusal of the impugned judgment transpires that the learned High Court thoroughly attended and discussed the evidence brought on record by the landowner while passing the impugned judgment. However, at the end, the learned High Court enhanced the compensation amount on the strength of judgment of this Court delivered in another case titled *WAPDA & others v. Mst. Inayat Begum & others*, (civil appeal No.193 of 2014, decided on 04.06.2015), while observing that this Court has fixed the compensation of the land situate in the same vicinity as Rs.10,63,333 per *kanal*, therefore, under the rule of consistency and principle of equality, the appellant is also entitled to get the same

compensation. To this extent, we do not agree with the view expressed by the learned High Court as each land has its own market/potential value. In the case titled *WAPDA & other v. Farooq Shahid & others* (civil appeal No.122 of 2016, decided on 23.06.2016), same proposition came under consideration of this Court as in that case the learned High Court had also enhanced the compensation on the similar ground and this Court after detailed discussion has held that the learned High Court was not justified to enhance the compensation merely on the strength of another case. The relevant paragraph of the said judgment reads as under:-

“After survey of the statements of the witnesses produced by the land owners in both the cases, it appears that the land in *Marawat Khan’s* case was adjacent to the road,

whereas, in the land in dispute the facility of the road is not available. In such situation, it cannot be said that the potential value of both the lands are the same. Thus, in our estimation, the learned High Court was not justified to enhance the compensation merely on the strength of *Marawat Khan's* case (supra)."

Although, we are of the view that the learned High Court was not justified to make the enhancement merely on the ground that the compensation of the land situate in the same vicinity has been fixed by the apex Court as Rs.10,63,333 per *kanal* in another case, however, at the same time, keeping in view the material available on record it appears that the amount fixed by the learned High Court is not unwarranted. In the award the Collector Land Acquisition clearly mentioned that the acquired land is very precious which is situate

near to Mirpur City within the limits of Municipal Corporation. The relevant findings of the Collector read as under:-

"زیر دستخطی نے مجوزہ اراضی کی صورت موقع ملاحظہ کی ہے۔ اراضی زیر ایوارڈ میرپور شہر کے قریب واقع ہے اور میونسپل حدود کے اندر واقع ہے۔ اس دیہہ میں مزروعہ اراضیات کے علاوہ بہت ساری ایسی اراضی بھی متاثر پائی گئی ہے جس میں بھٹہ جات خشت نصب شدہ ہیں۔ علاوہ ازیں آبادی دیہہ سکول اور دیگر سرکاری عمارات بھی شامل ہیں۔ اراضی زیر ایوارڈ زراعتی لحاظ سے بھی بہت اچھی ہے۔ زمینوں کی پیداواری صلاحیت بہت اچھی ہے اور آمدن کا معقول ذریعہ بھی ہیں۔ ایوارڈ کی صورت میں دیہہ کی بڑی آبادی اس ذریعہ آمدن سے محروم ہو جائے گی۔"

After juxtapose perusal of the findings recorded by the Collector (supra) and the material available on record, we are of the view that the compensation amount fixed by the learned High Court is sufficient to meet the ends of justice.

In view of the above finding no force both the appeals are hereby dismissed with no order as to costs.

Mirpur, **JUDGE** **CHIEF JUSTICE**

__ .03.2017

Date of announcement: 01.04.2017